STATE PERSONNEL BOARD, STATE OF COLORADO

Case No. 2000B132

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

CRAIG BRIDGMON,

Complainant,

VS.

DEPARTMENT OF REVENUE, DIVISION OF GAMING, Respondent.

Hearing was held on October 10, 2000, before Administrative Law Judge Robert W. Thompson, Jr. Respondent was represented by Coleman M. Connolly, Assistant Attorney General. Complainant appeared in person and was represented by Howard M. Haenel, Attorney at Law.

Respondent's sole witness was Tom Kitts, Director of the Division of Gaming. Complainant testified on his own behalf. Neither party introduced any exhibits into evidence.

Prior to the hearing, the parties submitted a written a Stipulated Partial Findings of Fact.

MATTER APPEALED

Complainant appeals the disciplinary termination of his employment. For the reasons set forth below, respondent's action is affirmed.

ISSUES

- 1. Whether complainant committed the acts for which discipline was imposed;
- 2. Whether respondent's action was arbitrary, capricious or contrary to rule or law;
- 3. Whether the discipline imposed was within the range of alternatives available to the appointing authority;
- 4. Whether either party is entitled to an award of attorney fees and costs.

STIPULATED FACTS

- 1. At all times relevant, Complainant Craig Bridgmon was the Agent in Charge of the Cripple Creek Office of the Division of Gaming, Colorado Department of Revenue. On or about April 6, 2000, Mr. Bridgmon was terminated from his position.
- 2. Gary Findlay and James Gulbrandsen during all pertinent dates were individuals licensed by the Colorado Department of Revenue, Division of Gaming.
- 3. Findlay and Gulbrandsen discussed various Cripple Creek real property with Craig Bridgmon. Subsequent to that discussion, Gulbrandsen and Findlay entered into a series of real estate transactions independent from, and without any participation by, Mr. Bridgmon.
- 4. Both Gulbrandsen and Findlay profited from those transactions, and they believed that Mr. Bridgmon should receive something for providing information to them that subsequently resulted in a profitable real estate venture. A cash finder's fee of \$17,500.00 was discussed, but rejected.
- 5. Craig Bridgmon and Gary Findlay had a number of social interactions over the years. Both were

aware that Mr. Bridgmon's spouse had admired the 1994 Jeep Grand Cherokee driven by Mr. Findlay's spouse. Findlay was in the process of leasing a new Lincoln Navigator for his spouse, and originally intended to trade in the Jeep vehicle as part of that transaction.

- 6. Bridgmon and Findlay agreed that title to the Jeep Grand Cherokee would be transferred to Mr. Bridgmon's spouse. The following transaction resulted:
- (a) On or about October 9, 1997, Bridgmon and his spouse met Findlay at Ken Ellegard Lincoln/Mercury Automobile Dealership, Colorado Springs, Colorado.
- (b) Findlay issued a check from his personal checking account in the amount of \$16,500.00 to the order of the automobile dealership, the amount previously agreed as the trade-in value of the 1994 Jeep Grand Cherokee.
- (c) Gulbrandsen issued a check in the amount of \$8,750.00 payable to Craig Bridgmon. Mr. Bridgmon endorsed that check, and gave it to Mr. Findlay.
- (d) Mr. Bridgmon's spouse issued a personal check to the order of the car dealership in the amount of \$862.80 to cover certain additional handling charges and transaction fees associated with the 1994 Jeep Grand Cherokee. Title transfer documents were initiated by the automobile dealership, and title to the 1994 Jeep Grand Cherokee previously owned by Findlay (Vehicle Identification No. IJ4AGZ78S7RC234547) was transferred to Mr. Bridgmon's spouse.
- (e) Findlay and Gulbrandsen together deducted a total of either \$16,500.00 or 17,500.00 on their 1997 Income Tax Returns as a business expense associated with a finder's fee.
- 7. In March of 2000, an investigation was initiated by the Colorado Department of Revenue, Division of Gaming, concerning the above transactions. After a Rule 6-10 Meeting on April 5, 2000, with Craig

Bridgmon, Tom Kitts, Division of Gaming Director, concluded as follows:

In accepting an item of value from a gaming licensee, you violated C.R.S. 12-47.1-101 <u>Conflict of Interest</u> as well as CLGCC Regulation 47.1-702 Prohibitions on receiving items of value. In addition, your actions violated the Division of Gaming internal policy #3 <u>Conflict of Interest</u>. You have also violated State Personnel Board Rule R-6-9 (2) Willful misconduct or violation of agency rules or laws that affect the ability to perform the job.

After making those findings, Mr. Kitts determined that a disciplinary action was warranted, and that termination was the appropriate discipline.

FINDINGS OF FACT

- 8. The Division of Gaming regulates and administers all aspects of limited gaming in Colorado, including licensing, auditing casinos and collecting gaming taxes.
- 9. Craig Bridgmon, complainant, was one of the initial employees of the Division of Gaming in 1991. The Division maintains its headquarters in Lakewood and has offices in Central City and Cripple Creek. Bridgmon was Agent in Charge of the Cripple Creek office, supervising all gaming investigators assigned to that office. His was a high profile position. The Division has a total of 32 investigators who enforce the rules, regulations and laws with respect to limited gaming. Investigators are certified as Level II Peace Officers and make arrests. They interact with other law enforcement agencies on a daily basis, including the Colorado Bureau of Investigation. They are held to the highest of ethical standards.
- 10. Applicants for a limited gaming license are subject to a background investigation.
- 11. There are four types of gaming licenses:
 - a) operator and retailer license
 - b) manufacturer and distributor license
 - c) support license for cashiers, dealers, and bartenders

- d) key license for "key" casino employees, such as managers.
- 12. No Division of Gaming employee, or a member of his/her immediate family, may accept "anything of value" from a gaming licensee. Even if the casino offers free coffee to the public, for example, a division employee is required to pay for it.
- 13. The Agent in Charge runs the office he is assigned to and performs all administrative duties. At the Cripple Creek Office, Bridgmon supervised twelve to fifteen employees. He trained others in the avoidance of conflicts of interest, and he was well-versed in the policy of not accepting anything of value from a gaming licensee.
- 14. In March 2000, Gaming Division Director Tom Kitts who, like Bridgmon, had been a division employee since the beginning in 1991, was advised by a casino owner that the owner had found in the casino's files a copy of a check in excess of \$8,000 from a James Gulbrandsen to Craig Bridgmon for a "finder's fee." Kitts and the Chief of Investigations met with the casino owner and received the check copy, which included only the front of the check. Apparently, the check had been found in the files of a corporation in Cripple Creek recently purchased by the casino.
- 15. Disturbed by the possibilities, Kitts summoned Bridgmon to Lakewood that afternoon to meet with him and the Chief of Investigations. At the meeting, Bridgmon was shown the check copy and stated that he had no idea what it was about; he had no knowledge of the check whatsoever, but he was upset over it.
- 16. Kitts ordered an investigation into the matter.
- 17. The written investigative report indicated to Kitts that, over a cup of coffee, Bridgmon advised Gulbrandsen and Gary Findlay that it would be a good idea to "tie up" certain real property in Cripple Creek, which they subsequently did. Gulbrandsen and Findlay told Bridgmon that if they turned the property over for a profit they would take care of him. Eventually, the two investors sold the property at a large profit and kept their word to Bridgmon by offering him a significant amount of cash as a finder's fee.

Bridgmon rejected the offer, saying that it would not look good for him to take money. Then, the transaction involving the Jeep, described in the stipulated facts, was arranged and carried out.

- 18. Findlay and Gulbrandsen each held a key gaming license. As casino owners, they had possessed operator's licenses, and as day-to-day managers they each had a key license. Unlike the operator's licenses, the key licenses had apparently been renewed, since they are valid for only one year.
- 19. In response to questions from the investigator, Bridgmon continued to deny all knowledge of the \$8,750.00 check written to him by Gulbrandsen, as well as ever having received anything of value from either Gulbrandsen or Findlay. When shown the back of the check displaying his signature, Bridgmon admitted that the signature was his, but he still could not figure out what the check was all about.
- 20. The investigator said he wanted to talk to Findlay, and Bridgmon made the contact. After talking to Findlay and being informed that the check was for the Jeep, Bridgmon phoned the investigator and told him what the check had been for. He also told Findlay to call the investigator. Stating that the Jeep had never crossed his mind, Bridgmon testified at hearing that he does not remember the check transaction even to this day.
- 21. When Gulbrandsen and Findlay sold their casino in May or June 1996, Bridgmon received their operator's licenses from them. He did not retrieve their key licenses. He believed that there was a three-year non-compete clause in the sales contract, meaning that Gulbrandsen and Findlay could not engage in the gaming business in Colorado for a period of three years.
- 22. Bridgmon could have easily accessed the computer in his office to confirm that Gulbrandsen and Findlay did not possess a gaming license. He did not do so.
- 23. Bridgmon knew that Gulbrandsen and Findlay were active casino owners and would have had to have a key license to perform their managerial functions.

- 24. Subsequent to the casino sale, Bridgmon became close friends with Gulbrandsen and Findlay, especially the latter.
- 25. It was a few months after the sale of the casino when Bridgmon met with Gulbrandsen and Findlay for a cup of coffee and mentioned that they might be interested in acquiring a particular piece of property, a parking lot in Cripple Creek.
- A little over a year passed before Gulbrandsen and Findlay sold the property for a sizable profit and kept their word to Bridgmon by offering him approximately \$17,000.00 in cash as a finder's fee. Bridgmon did not feel right about accepting cash but was willing to accept another form of payment, which turned out to be the Jeep Cherokee. Bridgmon's spouse signed all of the necessary documents to purchase the vehicle and have the title placed in her name only. Bridgmon endorsed the Gulbrandsen check over to Findlay as Gulbrandsen's half of the finder's fee, valuing Findlay's jeep at \$17,500.00.
- 27. At the R-6-10 meeting on April 5, 2000, Kitts gave a narrative of the facts as found in the investigation, which Bridgmon did not refute, admitting that he had done wrong. He did not explain how the transaction came about or the nature of his intent.
- 28. While acknowledging Bridgmon's history of commendable service, Kitts decided to terminate Bridgmon's employment because of the seriousness of a Division of Gaming employee accepting a thing of value from a gaming licensee, particularly an employee of Bridgmon's stature, that is, a senior staff member and one of the standardbearers of the agency. Kitts reasoned that Bridgmon could have verified whether either Gulbrandsen or Findlay currently held any kind of gaming license with a couple of keystrokes but instead violated state law and internal policies and regulations concerning conflicts of interest. Recognizing the policy that says that gaming regulators must be held to standards as high as the people they regulate, and that the agency must remain "squeaky clean" for the gaming industry and the general public, Kitts determined that there was no other appropriate remedy because the entire division was involved with

gaming. He did not believe that Bridgmon's violation of conflict of interest law and policy was unintentional, as Bridgmon professed. (See Stipulation #7.)

DISCUSSION

Legal Standard

In this *de novo* disciplinary proceeding, the burden is on the agency to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). The Board may reverse respondent's decision only if the action is found arbitrary, capricious or contrary to rule or law. '24-50-103(6), C.R.S. In determining whether an agency's decision is arbitrary or capricious, a court must determine whether a reasonable person, upon consideration of the entire record, would honestly and fairly be compelled to reach a different conclusion. If not, the agency has not abused its discretion. *McPeak v. Colorado Department of Social Services*, 919 P.2d 942 (Colo. App. 1996).

An administrative agency abuses its discretion when the decision under review is not reasonably supported by any competent evidence in the record. *Van Sickle v. Boyes*, 797 P.2d 1267 (Colo. 1990). No competent evidence means that the agency's ultimate decision is so devoid of evidentiary support that the only explanation must be that the agency's action was an arbitrary and capricious exercise of authority. *Board of County Commissioners v. O'Dell*, 920 P.2d 48 (Colo. 1996).

Arguments

Given complainant's high-level position, his knowledge of the conflict of interest prohibitions, his experience with the gaming industry and the undisputed need for gaming regulators to be squeaky clean, respondent argues that termination of employment was the only reasonable alternative in this instance. Respondent infers from the facts of the Jeep transaction, including the Jeep's \$17,000 value, the title being placed in the

name of the wife rather than complainant's name or both names, and the transaction occurring in the manner it did at a car dealership, that something was going on that was "under the table." Respondent suggests that Bridgmon did not check the data base to determine whether Gulbrandsen or Findlay possessed a gaming license because he did not want to know. Complainant's act was intentional and willful, in respondent's view; violation of the conflict of interest rules cannot be tolerated under the circumstances of this case.

To complainant, this case is all about intent. While admitting to a "technical" violation, he asserts that he objectively did not know that Gulbrandsen and Findlay held key licenses with the Division of Gaming sixteen months after they sold their casino. Knowing of the three-year non-compete agreement, he assumed that they had no reason to have any kind of gaming license. He concedes that his friendship with Findlay also made a difference.

Complainant avers that his conduct was an Ahonest, careless mistake" and had "nothing to do with gaming" since Gulbrandsen and Findlay were not engaged in a regulated activity at the time.

Complainant points to his longtime service as an outstanding employee and alleges that he was pre-judged, that his employment was automatically ended due to an undefined no-tolerance policy. Then he argues that other employees have violated the conflict of interest policy without being terminated, alleging an inconsistent and consequently arbitrary approach to discipline. He argues that the discipline of termination was excessive.

Analysis

There is substantial evidence to support the appointing authority's conclusions and termination decision. Respondent satisfied its burden under *Kinchen, supra, McPeak, supra*, and *Van Sickle, supra*.

Complainant characterizes his violation of the law and policy prohibiting conflicts of interest as merely technical, yet his violation was pure and blatant. Any reasonable person of his stature and experience would have taken the easy step of confirming that these two former casino owners, whom Bridgmon met in the

course of his duties as a gaming regulator, did not hold a Colorado gaming license before accepting a \$17,000.00 vehicle from them. A simple question of them would have supplied the information he needed. Complainant, himself, had trained gaming employees in the necessity of avoiding even an appearance of a conflict of interest and was aware of the underlying reasons for the agency remaining squeaky clean. Complainant's insistence that he had absolutely no idea what the \$8,750.00 check that he signed over to Findlay was all about casts doubt on his credibility.

It is incredible that he had to see his signature on the check and then talk to Findlay before such a significant transaction as took place at the car dealership even crossed his mind. Additionally, he failed to adequately explain why the title was placed solely in his wife's name in exchange for a so-called finder's fee which was owed to him. A reasonable inference is that he did not want to have the Jeep traced to him. It is also reasonable to infer that this was more than a careless mistake, as the appointing authority did. Even though Gulbrandsen and Findlay may not have been actively engaged in the business of gambling, they were participants in a regulated activity by virtue of their state-issued gaming licenses.

Complainant puts forth contradictory arguments when he asserts first that he was pre-judged as a result of respondent's no- tolerance policy with respect to conflicts of interest and then argues that he was the victim of disparate treatment because others have violated the prohibition of conflicts of interest and were not punished as severely. In the first place, there is no evidence that the Division of Gaming adheres to a policy of automatically terminating the employment of everyone who has the slightest conflict of interest. The appointing authority testified to the contrary, and the evidence demonstrates that he pursued his decision thoughtfully and with due regard for the circumstances of the situation as well as complainant's individual circumstances. The appointing authority did not abuse his discretion. See Rules R-1-6, R-6-6, R-6-9 and R-6-10, 4 CCR 801. And, secondly, there is no credible evidence of like instances in which an employee was treated differently. Thus, while these two arguments are contradictory, neither one finds sufficient support in the record.

This is not a proper case for the award of attorney fees and costs under section 24-50-125.5, C.R.S., of

the State Personnel System Act. $\it See \ also \ R-8-38, 4 \ CCR \ 801.$

CONCLUSIONS OF LAW

1.	Complainant committed the acts for which disc	cipline was imposed.	
2.	Respondent's action was not arbitrary, caprici	ous or contrary to rule or law.	
3.	The discipline imposed was within the range of alternatives available to the appointing authority.		
4.	Neither party is entitled to an award of attorney fees and costs.		
ORDER			
Respondent's action is affirmed. Complainant's appeal is dismissed with prejudice.			
DATE	D this day of		
November, 2000, at		Robert W. Thompson, Jr.	
Denver, Colorado. Administrative Law Judge			
		1120 Lincoln Street,	#1420
		Denver, CO 80203	
NOTICE OF APPEAL RIGHTS			
EACH PARTY HAS THE FOLLOWING RIGHTS			
1.	To abide by the decision of the Administrative Law Judge ("ALJ").		
2.	To appeal the decision of the ALJ to the State Per	sonnel Board ("Board"). To appea	al the decision of the
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ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. The notice of appeal must be <u>received</u> by the Board no later than the thirty (30) calendar day deadline. <u>Vendetti v. University of Southern Colorado</u>, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Rule R-8-58, 4 Code of Colo. Reg. 801. If a written notice of appeal is not received by the Board within thirty calendar days of the mailing date of the decision of the ALJ, then the decision of the ALJ automatically becomes final. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990).

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ may be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty calendar day deadline, described above, for filing a notice of appeal of the decision of the ALJ.

RECORD ON APPEAL

The party appealing the decision of the ALJ must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is <u>\$50.00</u> (exclusive of any transcription cost). Payment of the preparation fee may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 45 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 894-2136.

BRIEFS ON APPEAL

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The

answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double spaced and on 8 2 inch by 11 inch paper only. Rule R-8-64, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Rule R-8-66, 4 CCR 801. Requests for oral argument are seldom granted.

CERTIFICATE OF MAILING

This is to certify that on the _____ day of November, 2000, I placed true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

Howard M. Haenel
Attorney at Law
3200 Cherry Creek South Drive, Suite 380
Denver, CO 80209

and in the interagency mail, addressed as follows:

Coleman M. Connolly
Assistant Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203